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COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC000003

**Ex Parte, In re: Investigation of the
appropriate level of intrastate access
service prices**

HEARING EXAMINER'S PROTECTIVE RULING

May 26, 2000

On May 25, 2000, Bell Atlantic-Virginia, Inc. ("BA-VA"), by counsel, filed a motion requesting the entry of a Protective Order setting forth the procedures by which confidential proprietary information shall be handled generally in this proceeding. In support of the motion, counsel states that information to be filed in the case includes extensive cost studies containing confidential, proprietary information. Counsel further suggests that a protective order similar to that issued in Case No. PUC990100 is satisfactory and has been used by the parties to the instant case.

Upon consideration of BA-VA's request, I am of the opinion and find that protected treatment is warranted for such confidential, proprietary information. Accordingly,

IT IS DIRECTED THAT any documents, materials, and information to be produced by any party ("Party") in this proceeding, either for themselves or for their affiliates, in response to Commission orders, rulings, Commission Staff ("Staff") data requests or properly propounded interrogatories or requests for production of documents from Parties in this proceeding, which documents, materials, or information the producing party designates as confidential ("Confidential Information"), shall be examined and used only in accordance with the following conditions:

(1) All Confidential Information produced to Staff, or Parties shall be used solely for the purposes of this proceeding (including appeals).

(2) Access to Confidential Information shall be specifically limited to Staff or Parties, their counsel and expert witnesses, and to support personnel who are working on this case under the direction of their counsel or expert witnesses and to whom it is necessary that the Confidential Information be shown for the purposes of this proceeding. In order to obtain access to such information, the Staff witnesses and their attorneys are hereby directed to treat all Confidential Information received in connection with this case as set forth in this Protective Ruling. In order to obtain access to such information, Parties, their counsel and expert witnesses shall sign an Agreement to Adhere to

Protective Ruling (“Agreement”) which is Attachment A to this Protective Ruling. Staff counsel and expert witnesses are not required to sign the Agreement. All Agreements must be properly forwarded to the producing party upon execution.

(3) In the event that Staff or Parties seek permission to grant access to any Confidential Information to any person other than the persons described in Paragraph (2) above, the party desiring permission shall seek a stipulation from counsel for the producing party. The producing party shall be under no obligation to furnish Confidential Information to persons other than those described in Paragraph (2) above unless specifically ordered by the Examiner to do so. Parties are encouraged, however, to seek stipulations to the maximum extent practicable. In the event of a negative response, the party seeking disclosure permission may apply to the Examiner for such permission.

(4) In the event that a Party contends (in addition to or in lieu of confidentiality) that they (a) should not be required to produce specific documents, materials or information due to their commercially or competitive nature (“Competitively Sensitive Information”) or (b) should restrict access to Competitively Sensitive Information, that Party shall bear the burden of proving that such specific documents, materials, or information should not be discoverable or access should be restricted, including a showing that the information cannot be adequately protected by an appropriate nondisclosure statement. For purposes of responding to data requests propounded by the Staff or Parties in this proceeding, the production and handling of Competitively Sensitive Information shall be governed by the terms of an appropriate nondisclosure agreement between the producing party and the other party. While the Staff is bound by the terms of such an agreement, they are not required to execute it.

(5) A Party withholding Competitively Sensitive Information from any participant¹ shall immediately provide all parties with a log enumerating all such information. The log shall specify the following about the information withheld: (i) the original requesting party; (ii) the data request number and date of the request; (iii) the type of information (e.g., computer-stored information, microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying it; (iv) its present location and custodian; (v) the nature of the information; and (vi) the basis for the claim that the information is competitively sensitive. The withholding party shall telefax updates to the log, if any, to all participants on the first occasion Competitively Sensitive Information is withheld from any participant, and thereafter on a weekly basis, for the duration of this proceeding. The obligations imposed by this paragraph shall be in addition to the withholding party’s obligation to make specific objections to a data request that seeks Competitively Sensitive Information.

(6) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding which the

¹For purposes of this Ruling, the term “participant” means all parties and Staff.

producing party has designated, in whole or in part, as Confidential Information or Competitively Sensitive Information.

(7) In the event Staff or Parties seek to introduce testimony, exhibits, or studies that disclose Confidential Information, the Staff or the party seeking such introduction shall:

- (a) Notify the producing party at least three (3) days in advance of any hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party.
- (b) If such testimony is prefiled, file such testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated Confidential Information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless or until the Examiner rules to the contrary. Each party shall, upon signing Attachment A hereof, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the designated Confidential Information and each party and counsel shall be bound by this Ruling insofar as it restricts the use of and granting of access to the Confidential Information.

(8) Oral testimony regarding Confidential Information, if ruled admissible, will be taken in camera and that portion of the transcript recording such testimony shall be placed in the record under seal.

(9) In the event Staff or Parties seek to introduce at a hearing, testimony, exhibits or studies that disclose Competitively Sensitive Information, the Staff or the party seeking such introduction shall notify the producing party at least ten (10) days in advance of any such hearing unless a shorter period is necessary or would not unduly prejudice the producing party. Any testimony regarding Competitively Sensitive Information shall be taken in camera and in the presence of only those persons who have been granted access to the specific Competitively Sensitive Information pursuant to a nondisclosure agreement with the producing party and such other persons the Examiner may designate and who upon designation agree to the terms of an appropriate nondisclosure agreement satisfactory to the Examiner. That portion of the transcript recording such testimony shall be placed in the record under seal.

(10) In the event Staff or a Party files with the Commission and serves on other participants other testimony, exhibits, or studies from which Competitively Sensitive Information has been deleted, the participant shall immediately notify all participants and provide them with a general description of the Competitively Sensitive Information that has been deleted. To satisfy this requirement, the participants shall refer to the specific entry or entries on the log required by Paragraph (5) of this Ruling, if applicable. Otherwise, the

participants shall describe the deleted Competitively Sensitive Information by providing substantially the same information required by Paragraph (5). The notification shall be made by telefax on or before the first business day after the filing of the written testimony, exhibits, or studies. In the event Staff or a Party seeks to introduce testimony, exhibits, or studies containing reference to Competitively Sensitive Information at the hearing, such notification shall be provided under the supervision of the Examiner.

(11) No person authorized under this Protective Ruling to have access to Confidential Information shall disseminate, communicate, or reveal any such Confidential Information to any person not specifically authorized under this Protective Ruling (or nondisclosure agreement entered into pursuant to Paragraph (4) of this Protective Ruling) to have access to such confidential information.

(12) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Ruling shall be returned by the Party to the producing party (or destroyed) if requested to do so by the producing party. At such time, any originals or reproductions of any Confidential Information in Staff's possession will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Protective Ruling restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

(13) This Ruling does not preclude Staff or Parties from arguing, prior to public disclosure, that documents, materials, and information received under the Ruling should not be treated as confidential. But in no event shall any party disclose Confidential Information it has received subject to this Ruling absent a finding by the Examiner or the Commission that such information does not require confidential treatment. If Staff or any party desires to make such an assertion, the producing party shall be given reasonable notice before being required to bear the burden of proving the contrary, and reasonable notice shall be at least three (3) days in advance of a hearing in connection with testimony that is not prefiled and that contains Confidential Information. The burden of proof to show that documents, materials, or information require confidential treatment as trade secrets, commercially or personally sensitive information, or other grounds for confidential treatment shall be upon the proponent of maintaining the documents, materials, or information in confidence.

(14) A producing party is obligated to separate non-confidential documents, materials, and information from Confidential Information wherever practicable, and to produce the non-confidential documents, materials, and information forthwith.

Deborah V. Ellenberg
Chief Hearing Examiner

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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AGREEMENT TO ADHERE TO PROTECTIVE RULING

I, _____, on behalf of and representing _____,
hereby acknowledge having read and understood the terms of the Protective Ruling entered
in this proceeding by the Hearing Examiner on _____, 2000, and agree to treat all
Confidential Information that I receive in connection with this Case No. PUC000003 as set
forth in that Ruling.

Signature: _____

Printed Name: _____

On behalf of: _____